

REMARKS

The Applicants have carefully reviewed the Final Office Action mailed September 25, 2007 (hereinafter “Final Office Action”) and offer the following remarks.

Claims 1, 3-7, 10-12, 14-18, and 21-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,587,837 B1 to *Spagna et al.* (hereinafter “*Spagna*”) in view of U.S. Patent Application Publication No. 2002/0146122 A1 to *Vestergaard et al.* (hereinafter “*Vestergaard*”) and further in view of U.S. Patent Application Publication No. 2007/0005432 A1 to *Likourezos et al.* (hereinafter “*Likourezos*”). The Applicants respectfully traverse the rejection.

According to Chapter 2143.03 of the M.P.E.P., in order to “establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” The Applicants submit that neither *Spagna*, *Vestergaard*, nor *Likourezos*, either alone or in combination, discloses all the features recited in claims 1, 3-7, 10-12, 14-18, and 21-23. More specifically, claim 1 recites a method for providing an online digital marketplace comprising, among other features, if a second user downloads a file from a third party website, paying a first user a reseller commission for the sale of a file owned by a content owner and then paying the content owner a payment based on a retail price minus the reseller commission where the first user downloaded the file from a digital marketplace and resold the file on the third party website. Claims 12 and 23 include similar features. The Applicants submit that none of the references, either alone or in combination, disclose the feature of, if a second user downloads a file from the third party website, paying a first user a reseller commission for the sale of a file owned by a content owner and then paying the content owner a payment based on a retail price minus the reseller commission where the first user downloaded the file from a digital marketplace and resold the file on the third party website.

In maintaining the rejection, the Patent Office asserts that the Applicants do not claim the feature “paying a content owner a payment based on a retail price minus a reseller commission paid to a party who downloaded the file from a digital marketplace and resold the file on a third party website.” (See Final Office Action, page 2.) The Applicants respectfully disagree. Regarding the feature “paying a content owner a payment based on a retail price minus a reseller commission,” claim 1 explicitly recites “paying the content owner a payment based on the retail price minus the reseller commission.” Claims 12 and 23 explicitly recite similar features. Thus,

the claims recite the feature of “paying a content owner a payment based on a retail price minus a reseller commission.”

Regarding the feature “a reseller commission paid to a party who downloaded the file from a digital marketplace,” claim 1 explicitly states “paying the first user the reseller commission set for the file” where the claim includes “allowing a first user to search for files posted on the digital marketplace for one to resell on a third party website.” Claims 12 and 23 explicitly recite similar features. Accordingly, the claims recite the feature of “a reseller commission paid to a party who downloaded the file from a digital marketplace.”

The claims also recite the feature “resold the file on a third party website.” As detailed above, claim 1 recites “allowing a first user to search for files posted on the digital marketplace for one to resell on a third party website.” Thus, contrary to what is asserted by the Patent Office, the claims recite paying a content owner a payment based on a retail price minus a reseller commission paid to a party who downloaded the file from a digital marketplace and resold the file on a third party website.

The Patent Office also asserts that the feature of “paying a first user a reseller commission for the sale of a file owned by a content owner and then paying the content owner a payment based on a retail price minus the reseller commission where the first user downloaded the file from a digital marketplace and resold the file on a third party website” is not recited in the claims. The Applicants respectfully disagree. With respect to the feature of “paying a first user a reseller commission for the sale of a file owned by a content owner,” claim 1 recites “allowing a content owner to post a file on the marketplace for access by users,” “allowing a first user to search for files posted on the digital market place for one to download,” and “paying the first user the reseller commission set for the file.” Claims 12 and 23 explicitly recite similar features. Therefore, the claims recite the feature of “paying a first user a reseller commission for the sale of a file.”

The claims also recite the feature of “where the first user downloaded the file from a digital marketplace.” Particularly, as previously mentioned, claim 1 recites “allowing a first user to search for files posted on the digital marketplace for one to resell on a third party website.” Claims 12 and 23 explicitly recite similar features. As such, the claims recite the feature of “where the first user downloaded the file from a digital marketplace.” Regarding the remaining features, namely “paying the content owner a payment based on a retail price minus the reseller

commission” and “resold the file on a third party website,” the Applicants have previously discussed where the claims recite these features. As such, the Applicants submit that the claims recite the feature of “paying a first user a reseller commission for the sale of a file owned by a content owner and then paying the content owner a payment based on a retail price minus the reseller commission where the first user downloaded the file from a digital marketplace and resold the file on a third party website.”

Turning to the references as they have been applied to the pending claims, the Applicants have reviewed *Spagna* and submit that *Spagna* does not disclose the feature of, if a second user downloads a file from the third party website, paying a first user a reseller commission for the sale of a file owned by a content owner and then paying the content owner a payment based on a retail price minus the reseller commission where the first user downloaded the file from a digital marketplace and resold the file on the third party website. Similarly, neither *Vestergaard* nor *Likourezos*, either singularly or in combination, discloses this feature. The Patent Office supports the rejection by indicating that *Vestergaard* discloses this feature at paragraph [0152]. (See Final Office Action, page 3). The Applicants respectfully disagree. While the cited portion of *Vestergaard* does disclose that an MPE Distributor field 246 is set to a default of 25% of gross receipts (see *Vestergaard*, paragraph [0152]), *Vestergaard* does not disclose that a distributor 136 is a first user as recited in the claims where the distributor 136 has downloaded a file from a digital marketplace and has resold the file on a third party website. Instead, *Vestergaard* discloses that a content owner 132 interacts with a distribution server 136 to make a list of available files on the distributor server 136. (See *Vestergaard*, paragraph [0090]). More specifically, the content owner 132 provides the files to the distribution server 136. The distribution server 136 does not search for files posted on a digital marketplace to resell on a third party website. As the distribution server 136 is not a first user as recited in the claims, *Vestergaard* cannot disclose that if a second user downloads a file from a third party website, paying a first user a reseller commission and then paying a content owner a payment based on the retail price minus a reseller commission.

Likewise, *Likourezos* does not disclose the feature of, if a second user downloads a file from the third party website, paying a first user a reseller commission for the sale of a file owned by a content owner and then paying the content owner a payment based on a retail price minus the reseller commission where the first user downloaded the file from a digital marketplace and

resold the file on the third party website. In maintaining the rejection, the Patent Office asserts that *Likourezos* discloses paying a content owner a retail price minus the reseller commission and where the product is sold on a third party website at paragraph [0010]. (See Final Office Action, page 3). The Applicants respectfully disagree. *Likourezos* discloses that an owner lists an item for sale with a short description on an electronic website. (See *Likourezos*, paragraph [0004]). According to *Likourezos*, a party who has placed the highest bid for the item is the winning bidder. (See *Likourezos*, paragraph [0009]). After the seller has sold their product using the electronic website, the owner is paid an amount equal to a charged amount minus a commission and a transaction fee. (See *Likourezos*, paragraph [0010]). However, according to *Likourezos*, the buyer does not download a file from the electronic website. Instead, the seller ships the item when payment confirmation is received. (See *Likourezos*, paragraph [0010]). The buyer cannot download a file from the electronic website, as recited in the claims. Thus, *Likourezos* cannot disclose that if a second user downloads a file from a third party website, paying the first user a reseller commission set for the file and paying that content owner a payment based on the retail price minus the reseller commission. Accordingly, claims 1, 12, and 23 are patentable over the cited references and the Applicants request that the rejection be withdrawn. Similarly, claims 3-7, 10, 11, 14-18, 21, and 22, which variously depend from either claim 1 or 12, are patentable for at least the same reasons along with the novel features recited therein.

Claims 2, 13, 23-27, and 30-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Spagna* in view of *Vestergaard* and *Likourezos*, and further in view of U.S. Patent Application Publication No. 2003/0023505 A1 to *Eglen et al.* (hereinafter “*Eglen*”). The Applicants respectfully traverse the rejection.

Claim 23 recites a method for providing an online digital marketplace comprising, among other features, if a second user downloads a file from a third party website, paying a first user a reseller commission for the sale of a file owned by a content owner and then paying the content owner a payment based on a retail price minus the reseller commission where the first user downloaded the file from a digital marketplace and resold the file on a third party website. Claim 33 includes similar features. The Applicants submit that none of the references, either alone or in combination, disclose the feature of, if a second user downloads a file from a third party website, paying a first user a reseller commission for the sale of a file owned by a content owner and then paying the content owner a payment based on a retail price minus the reseller

commission where the first user downloaded the file from a digital marketplace and resold the file on a third party website. As detailed above, neither *Spagna*, *Vestergaard*, nor *Likourezos*, either alone or in combination, discloses this feature. Similarly, *Eglen* does not disclose this feature. As such, claims 23 and 33 are patentable over the cited references and the Applicants request that the rejection be withdrawn. Claims 24-27, 30-32, and 34-37, which variously depend from either claim 23 or claim 33, are patentable for at least the same reasons along with the novel features recited therein.

Regarding claims 2 and 13, as detailed above, claims 1 and 12, the base claims from which claims 2 and 13 respectively depend, are patentable over *Spagna*, *Vestergaard*, and *Likourezos*. Moreover, as detailed above, *Eglen* does not address the previously noted shortcomings of *Spagna*, *Vestergaard*, and *Likourezos*. Accordingly, claims 2 and 13 are patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claims 8, 9, 19, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Spagna* in view of *Vestergaard* and *Likourezos*, and further in view of U.S. Patent No. 5,819,092 to *Ferguson et al.* (hereinafter “*Ferguson*”). The Applicants respectfully traverse the rejection. As mentioned above, *Spagna*, *Vestergaard*, and *Likourezos* fail to disclose all the features recited in claims 1 and 12, the base claims from which claims 8 and 19 respectively depend. In addition, *Ferguson* fails to address the previously noted shortcomings of *Vestergaard*. As such, claims 8 and 19 are patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claim 9 recites “wherein step (b)(i) further includes the step of: including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission.” Claim 20 includes similar features. The Applicants submit that none of the references, either alone or in combination, disclose or suggest that sorting options include sorting files by popularity, by date, by size, by price, and by reseller commission. The Patent Office supports the rejection by indicating that *Spagna* discloses this feature at col. 94, l. 2 and *Ferguson* discloses this feature at col. 10, l. 62 through col. 11, l. 8. (See Final Office Action, page 4). The Applicants respectfully disagree. The Applicants submit that while the cited portion of *Spagna* mentions sorting by artist, category, label, or other, nowhere does the reference explicitly or inherently disclose sorting options which include sorting files by popularity, by date, by size, by price, and by reseller commission. Likewise, the cited portion of

Ferguson mentions nothing about sorting, much less sorting options that include sorting files by popularity, by date, by size, by price, and by reseller commission. The Applicants have reviewed the remaining portions of *Ferguson* and submit that at most, *Ferguson* discloses sorting a drop-down list box that indicates how entries are sorted within a category. (See *Ferguson*, col. 25, ll. 18-19). However, nowhere does the reference disclose the sorting options recited in claims 9 and 20. Therefore, in addition to the reasons noted above, claims 9 and 20 are patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claims 28, 29, and 38-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Spagna* in view of *Vestergaard*, *Likourezos*, and *Eglen*, and further in view of *Ferguson*. The Applicants respectfully traverse the rejection. Claims 28, 38, and 40 depend from claims 23 or 33. As detailed above, claims 23 and 33 are patentable over *Vestergaard*, *Eglen*, and *Spagna*. In addition, *Ferguson* does not disclose or suggest the features missing from *Vestergaard*, *Eglen*, and *Spagna*. As such, claims 28, 38, and 40 are patentable over the cited references and the Applicants respectfully request that the rejection be withdrawn.

Claim 29 recites “including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission.” Claim 39 includes similar features. As detailed above, neither *Spagna*, *Vestergaard*, *Likourezos*, nor *Ferguson*, discloses sorting options which include sorting files by popularity, by date, by size, by price, and by reseller commission. Similarly, *Eglen* does not disclose this feature. Therefore, for this additional reason, claims 29 and 39 are patentable over the cited references and the Applicants request that the rejection be withdrawn.

The present application is now in a condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact the Applicants’ representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,
WITHROW & TERRANOVA, P.L.L.C.

By:



Anthony J. Josephson
Registration No. 45,742
100 Regency Forest Drive, Suite 160
Cary, NC 27518
Telephone: (919) 238-2300

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